



Public Employees for Environmental Responsibility

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Office of the General Counsel

June 4, 2001

Mr. Elmo Baca
State Historic Preservation Officer
Office of Cultural Affairs
Villa Rivera Building - 3rd Floor
228 E. Palace Avenue
Santa Fe, New Mexico 87503

Service Copy

BY FIRST CLASS MAIL

Re: FCC Docket No. RM-9913, and FCC Violations at Pecos National Historical Park

Dear Mr. Baca:

On April 16, 2001, the Public Employees for Environmental Responsibility (PEER) wrote to the Chairman of the Federal Communications Commission (FCC) concerning his Agency's failure to obey the law regarding a project under your jurisdiction in the State of New Mexico. The construction of a communications tower near Pecos, New Mexico requires your review as you execute New Mexico's rather stringent preservation laws and as you comply with your obligations to the Advisory Council on Historic Preservation.

SBA Towers, Inc. of Boca Raton, Florida recently erected a tall communications tower near Pecos National Historical Park, New Mexico. Applicants for such towers must register with the FCC and comply with the FCC's environmental regulations found at 43 Code of Federal Regulations (CFR) Part 17.

FCC regulations require the antenna owner to prepare documents under the National Environmental Policy Act (NEPA) 42 U.S.C. 4321, if the antenna "... may affect districts, sites, buildings, structures or objects ... that are listed, or are eligible for listing, in the National Register of Historic Places" or "... may affect Indian religious sites." 47 CFR 1.1307(a)(4) & (5). Pecos National Historical Park is on the National Register and may be sacred to members of Jemez Pueblo.

1

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21



Pecos National Historical Park/FCC Violation Letter
June 4, 2001

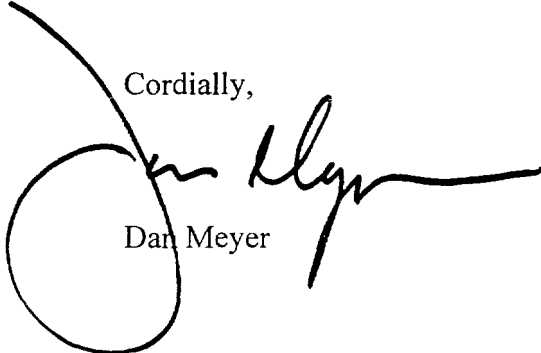
In plain disregard of the requirement, the applicant (SBA Towers) excluded their tower from NEPA review. PEER believes that the FCC is in violation of NEPA by routinely allowing applicants, like SBA, to exclude their actions from environmental compliance. The FCC's failure is rooted in the system of "self-certification" it has set up for industry. Pressure on consultants who want to be rehired again and again has lead to the production of potentially fraudulent Environmental Assessments ("EA") which are not subsequently reviewed by the FCC for integrity. All parties should ask themselves, why has a tower been erected at Pecos, and where is the EA which backed the self-certification allegedly performed by SBA?

The FCC is also in violation of the National Historic Preservation Act (NHPA). Section 106 of the NHPA and the regulations that implement the Act at 36 CFR Part 800 require that a federal agency, prior to initiating an undertaking, consult with the State Historic Preservation Officer and interested Indian Tribes, on the effects of the undertaking on National Register-listed properties (36 CFR 800.2).

Approving the erection of communication towers is a federal agency "undertaking." The communications tower affects Pecos National Historical Park, a National Register site. To our knowledge, neither the FCC nor SBA Towers ever consulted with the State Historic Preservation Officer concerning the towers' effects on Pecos National Historical Park.

If this is true, PEER has further cause for concern over the FCC's failure to obey the law. Please inform us if our understanding is correct and if FCC or SBA Tower, Inc ever consulted with your office under section 106 of the NHPA. PEER also requests you initiate Section 106 consultations over this site, and all other FCC actions in the State of New Mexico.

Cordially,


Dan Meyer

Service to Attached List.

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National jurisdictions

Governor Joe Cajero
Jemez Pueblo
P.O. Box 100
Jemez, New Mexico 87024

Lieutenant Hilario Armijo
Jemez Pueblo
P.O. Box 100
Jemez, New Mexico 87024

Federal jurisdictions

The Honorable Gale Norton, Secretary
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1849 C Street, N.W.
Washington, D.C. 20240

Earl E. Devaney, Esquire
Office of the Inspector General
Department of the Interior
1849 C Street, N.W.
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John D. Leshy, Esquire
Office of the Solicitor
Department of the Interior
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Jesus L. Lopez, Esquire
Office of the Solicitor, Field Office SW Region
United States Department of the Interior
P.O. Box 1042
Santa Fe, NM 87504-1042

Ms. Dinah Bear, Acting Chair
Council on Environmental Quality ("CEQ")
722 Jackson Place, N.W.
Washington, D.C. 20503

Cathryn Buford Slater, Chair
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue - Suite 809
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Washington, D.C. 20004

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission (FCC)
Portals II - Suite TW A325
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Michael K. Powell, Chair
Federal Communications Commission (FCC)
Office of the Chair — Eighth Floor
445 12th Street, S.W.
Washington, D.C. 20554

Thomas J. Sugrue, Bureau Chief
Federal Communications Commission ("FCC")
Wireless Telecommunications Bureau ("WTB")
445 12th Street, S.W.
Washington, D.C. 20554

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Mr. Dan Abeyta
Commercial Wireless Division, WTB
Federal Communications Bureau ("FCC")
445 12th Street, S.W. - Suite 4A-236
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Private parties

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c/o Western Regional Office
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TinaMarie Ekker, Policy Director
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Mr. Frank Stillwell
Federal Communications Commission ("FCC")
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